ANTI-HARASSMENT POLICIES FOR THE WORKPLACE:
AN EMPLOYER'S GUIDE

Canadian Human Rights Commission in cooperation with Human Resources Development Canada and Status of Women
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PURPOSE

Employers are required by the Canada Labour Code to develop their own harassment policies. In addition, the existence of appropriate harassment policies and procedures will be a factor considered by the Canadian Human Rights Commission in evaluating a company's liability in harassment complaints. The purpose of the model policies is to assist employers in meeting these requirements. However, employers retain responsibility for preparing appropriate policies, monitoring their effectiveness, updating them as required, ensuring all employees are aware of the policy and providing anti-harassment training.

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INTRODUCTION

Harassment, whether sexual, racial, based on a personal characteristic, or through abuse of authority, is more prevalent in our workplaces than many of us would like to think. Does it matter? Yes. Not only is harassment against the law, but as we will see in the following pages, it has a negative impact on employees, and costs employers money and productivity. An effective anti-harassment policy, in which education and training play key roles, is one of the most important steps to a harassment-free work environment.

But writing an anti-harassment policy can be a daunting task. We have produced this information kit for that reason: to help federally-regulated employers understand what harassment is; how it can happen; what the law says; what appropriate responses to it are; and, how to eliminate or at least minimize it in the workplace. We hope it makes writing an anti-harassment policy easier.

No one policy can be applied to every workplace. Even within the same

industry, and perhaps within the same organization, different workplaces will have different needs. Use this information kit as a workbook. You can adapt the examples, the language, and the suggestions to fit your own workplace. There are checklists and examples to guide you in creating your policy, and to help you explain harassment to your employees. You and they will be happier and more productive as a result.

Although portions of this guide can be handed out to employees to help them better understand harassment and their role in preventing it, the material included here is intended primarily for the immediate benefit of federally-regulated employers, and is written mainly from an employer's perspective.

The guide is written with all federally-regulated employers in mind: large, medium, and small. There are two model policies included: one for medium and large employers, and one for small employers. The guide is written in sections, so that you need only work with the sections that apply to you, and so that you can copy and distribute those parts you think will be useful to your workforce.

We gratefully acknowledge the assistance of Status of Women Canada and the Labour Program at Human Resources Development Canada in preparing this document and thank those individuals and groups who provided valuable feedback when it was in draft form.

PART 1: THE BACKGROUND

1.1 THE LAW

Harassment is against the law

Both the Canadian Human Rights Act and the Canada Labour Code protect employees from harassment related to work (see Appendix A, Legislation). Provincial human rights laws also prohibit harassment. And the Criminal Code protects people from physical or sexual assault.

In order to fulfill their responsibilities under federal human rights legislation, employers should have a clear anti-harassment policy that their employees know about and understand. As well, the Canada Labour Code requires employers to have a policy statement on sexual harassment containing specific elements including how harassment complaints can be brought to the attention of the employer.

Ultimately, employers are responsible for acts of work-related harassment.

The Supreme Court has said that the goal of human rights law is to identify and eliminate discrimination. Employers control the organization, and are therefore the only ones who can actually reverse the negative effects of harassment and ensure a healthy work environment. So no matter what kind of workplace you own or business you operate, you have a responsibility to make sure your employees do not experience harassment. If harassment does occur, you must show that you did everything you could to prevent it, or to alleviate its effects. (*Robichaud* v. *Treasury Board*, 1987)

Employers are responsible for harassment by employees of non-employees, such as potential employees, clients and customers. Employers must also take action to address the situation if employees are harassed by non-employees such as clients, customers, couriers, etc.

1.2 IDENTIFYING HARASSMENT

Unwelcome behaviour that demeans, humiliates, or embarrasses

Harassment is any behaviour that demeans, humiliates or embarrasses a person, and that a reasonable person should have known would be unwelcome. It includes actions (e.g. touching, pushing), comments (e.g. jokes, name-calling), or displays (e.g. posters, cartoons). The Canadian Human Rights Act prohibits harassment related to race, national or ethnic origin, colour, religion, age, sex, marital status, family status, disability, pardoned conviction, or sexual orientation.

Disrespectful behaviour, commonly known as "personal" harassment is not covered by human rights legislation. While it also involves unwelcome behaviour that demeans or embarrasses an employee, the behaviour is not based on one of the protected grounds named above. Nevertheless, some employers choose to include personal harassment in their anti-harassment policies.

Unwanted sexual behaviour

Sexual harassment includes offensive or humiliating behaviour that is related to a person's sex, as well as behaviour of a sexual nature that creates an intimidating, unwelcome, hostile, or offensive work environment, or that could reasonably be thought to put sexual conditions on a person's job or employment opportunities. A few examples are: questions and discussions about a person's sexual life; touching a person in a sexual way; commenting on someone's sexual attractiveness or sexual unattractiveness; persisting in asking for a date after having been refused; telling a woman she belongs at home or is not suited for a particular job; eyeing someone in a suggestive way; displaying cartoons or posters of a sexual nature; writing sexually suggestive letters or notes.

Sexual harassment is frequently more about power than about sex. It occurs in situations where there is unequal power between the people involved, and is an attempt by one person to assert power over the other. Harassment can also occur when an individual is in a vulnerable position because he or she is in the minority - the only woman, member of a visible minority, aboriginal person or person with a disability - and is, for example, ostracized by colleagues.

Abuse of authority

Abuse of authority occurs when a person uses authority unreasonably to interfere with an employee or the employee's job. It includes humiliation, intimidation, threats, and coercion. It does not include normal managerial activities, such as counselling, performance appraisals, and discipline, as long as these are not done in a discriminatory manner. Abuse of authority unrelated to a prohibited ground is not covered by human rights legislation. Nonetheless, some employers state in their anti-harassment policies that abuse of authority will not be tolerated.

1.3 AN ANTI-HARASSMENT POLICY -- WHAT'S IN IT FOR ME?

Employees may be afraid to complain

Often, employers, managers, and employees believe that harassment is not a problem in their particular workplace. They may especially believe this if there are no complaints. However, a complaint-free workplace is not a guarantee of a problem-free workplace. Employees may be afraid to speak up. They and their work may be suffering in all kinds of ways without employers, managers, or colleagues being aware of it. People who are being harassed may fear embarrassment, retaliation, job loss, or loss of acceptance by colleagues if they complain. They may also fear not being believed, especially where differences in level of authority, age, sex, race, religion and the like exist.

Harassment costs money

Harassment has a direct negative impact on employees and on a company's profitability. Employees who are being harassed can suffer from headaches, ulcers, tension, depression, insomnia, and other illnesses that either keep them away from work or reduce their well-being and productivity. An employee who is being harassed may resign, which penalizes that individual financially, and means that a new employee must be trained. If harassment is an ongoing problem, it may affect morale and lead to a decrease in productivity and high staff turnover.

Case Study: the costs of harassment

A woman in a trade was paid more than $100,000 by her employer as compensation for harassment and discrimination at work. She constantly faced sexist remarks, such as "this is a man's job" and "women should be home doing dishes and washing," as well as questions about her bathroom habits. As a result of the ensuing stress, she was forced to take extensive sick leave. Her sick leave resulted in a poor performance appraisal, and she was eventually fired.

Other female employees had also been subjected to sexist comments, and said their supervisors and male peers were rude or uncooperative. Some of them said their male colleagues had lied to them about job-related information.

The company had no anti-harassment policy and no staff trained to deal with harassment. As a result of the Canadian Human Rights Commission's investigation and the settlement of the complaint, the company agreed to financial compensation for the complainant. It also agreed to develop an anti-harassment policy, set up an internal redress procedure, train staff to investigate complaints, create some positions whose mandate was to eliminate discrimination, and provide harassment awareness seminars for all its employees. (Canadian Human Rights Commission,* Harassment Casebook *1991)

Education increases awareness and minimizes problems

Having an anti-harassment policy in your workplace, and educating all managers and employees about harassment, is an essential step in eliminating harassment. Greater awareness will help people recognize when their own behaviour may be harassing. Having a policy in place gives employees an avenue of communication if they have concerns regarding harassment in the workplace. By letting people know that harassment will not be tolerated, a policy can improve morale, and minimize the lost efficiency and lost profits caused by stress-related illness.

Most employers know that a happy work environment is necessary for a productive, efficient workplace. Many are now paying more attention to health, safety, and general worker satisfaction through programs that encourage exercise, allow time to attend to family responsibilities, and help employees manage stress. Freeing the workplace from harassment is also essential for efficiency and effectiveness.

Employers are legally responsible

Moreover, employers can be held legally responsible for harassment in

their workplaces. Courts may impose penalties on the employer and the manager, even if neither of them was involved in the harassment. An organization that does nothing to prevent harassment, therefore, may well find itself facing serious financial and legal consequences.

To prevent and deal with harassment, and to limit the remedies assessed against it, an organization can:

- educate employees and management about harassment;
- have an effective policy in place which includes a requirement to address any instances of harassment promptly, discreetly and properly.

Case Study: employer's responsibility

The first woman promoted as supervisor of a team of cleaners with a federal department was sexually harassed by her foreman on several occasions. There were numerous conversations of a sexual nature and several physical encounters including attempted sexual intercourse. Most of these incidents took place while the woman was still in her probationary period. She testified at the hearing that she was afraid and intimidated. She continually told the foreman to stop, and that his advances were unwelcome. But the foreman used his authority and threatened repercussions to persuade her to agree to unwelcome acts.

The Department was held responsible for the foreman's acts. The Supreme Court of Canada decided that an employer is responsible for providing a work environment free of harassment. It added that "only an employer can remedy undesirable effects [of discrimination]; only an employer can provide the most important remedy--a healthy work environment." Employers are therefore responsible for all acts of their employees that are Ain some way related or associated with employment".

The Court also pointed out that although employers will be liable for harassment, whether they knew of it or not, the penalties imposed will be less, or non-existent, for an employer that "responds quickly and effectively to a complaint...to remedy and prevent recurrence."* Robichaud v. Treasury Board *(Department of National Defence)

Anti-harassment policies improve productivity and profits

Effective anti-harassment policies do not cost much to develop or to maintain. They cost much less than sick leave, poor performance,

employee turnover, human rights complaints, constructive dismissal suits, workers' compensation, legal costs, and compensation for lost wages, pain and suffering. And most of us accept that word of mouth is the best advertising. Negative publicity harms an organization. Employers whose workers are happy and confident will not only keep those workers longer; they will also attract more and better workers when they do need to hire. This, in turn, means better service to clients and customers, and definite advantages in the marketplace.

PART 2: WRITING A POLICY

2.1 MODEL POLICIES -- HOW DO THEY WORK?

Changing behaviour and attitudes is the most effective way of ensuring a safe and harassment-free workplace for everyone. Having a clear, well-known anti-harassment policy in your workplace is one way of promoting a harassment-free environment. If harassment is alleged, the policy will let everyone involved know what their rights and responsibilities are. The harassment can then be dealt with promptly, efficiently, and with the least disruption and cost possible.

It is important for employers to act quickly to resolve complaints. Harassment does not go away on its own; it is more likely to get worse and become more difficult to address as time goes on.

Having an anti-harassment policy does not mean that there will be no harassment complaints. However, having an effective policy and procedures, coupled with anti-harassment training for all staff, will help to ensure that individuals who are being harassed come forward and the problem is addressed quickly and effectively. For employees, the faster the harassment is stopped the better. Quick action also benefits employers. The courts have held that an employer who responds quickly and effectively to a complaint by instituting a scheme to remedy and prevent reoccurrence will not be liable to the same extent, if at all, as an employer who fails to adopt such steps.

Model policies are guidelines only

These model policies can help you develop your own anti-harassment policies. Change them as necessary to fit your workplace and your employees. But do be aware that there are certain crucial responses to harassment that courts will look for as evidence of "due diligence"; in other words, proof that you did everything you could to prevent harassing situations.

- You must treat all allegations of harassment seriously, and investigate them promptly.
- You must resolve instances of harassment as soon as you become aware of them, even if there has been no complaint.
- You must do your best to mitigate the effects of harassment, for example, by restoring sick leave used because of the harassment and ensuring the victim gets an apology from the harasser and perhaps from the organization.
- You must take action to prevent a reoccurrence of the harassment by instituting human rights training for the harasser and, perhaps, for all staff, and making sure all employees have, and understand, the policy.

It is important to make a commitment to these steps in your policy.

Case study: due diligence, poisoned work environment

A female employee complained that her supervisor used an explicit statue to make jokes of a sexual nature. She said she complained to management about this and about posters of nude women at a postal station where she worked. Instead of removing the material, the organization transferred her to another station that also had nude posters. The tribunal ruled that sexual harassment Aincludes any unwelcome conduct of a sexual nature that detrimentally affects a person in the work environment...The presence of posters that workers use as the basis of comments and jokes of a sexual nature about the size of their breasts, their figures, etc., definitely causes embarrassment and lowers the status of women."

The statue and posters were "used as the basis for humiliating comments about the complainant which were intended to belittle her" in comparison with her male co-workers, and "poisoned the work environment."

The organization had not consented to the harassment, but it did nothing to stop it, and "did not exercise diligence to avoid the effect after having been informed" of the harassment. The organization was held responsible, and the complainant received $5,700 in damages. (*Pond v. Canada Post Corporation*)

Note: The act of displaying a sexually explicit poster constitutes harassment if it causes an individual to feel demeaned or embarrassed. It is not necessary for the poster to be used as the basis for comments and jokes as it was in this case.

Who can use these policies?

These model policies are directed at federally-regulated employers, whether in the public or the private sector, but may be useful to any employer.

Treasury Board policies

Federal government departments and agencies covered by Treasury Board policies can also look at the *Policy on the Prevention and Resolution of Harassment in the Workplace* . It underlines every employee`s right to fair treatment in the workplace and to a harassment-free environment. The policy covers not only harassment related to the grounds prohibited under the *Canadian Human Rights Act* but also harassment of a general nature including "rude, degrading or offensive remarks or e-mails, threats or intimidation." It makes managers responsible for ending harassment and has some very specific monitoring and reporting requirements. It calls for every effort to be made to resolve the situation. If early resolution is not successful or is not appropriate, an employee can file a complaint. Mediation must be offered before an investigation is started. See the policy itself for more information.

2.2 HOW TO WRITE AN ANTI-HARASSMENT POLICY

In order for an anti-harassment policy to work, it must be:

- unequivocally supported by management;
- clear;
- fair;
- known to everyone, at all levels of the organization; and,
- applied to everyone, at all levels of the organization.

Using these points as guiding principles, an employer can look at concrete ways of achieving the ultimate goal of a healthy, harassment-free workplace. No matter the size of your organization, the principles are the same. Most of what follows will apply to both large and small companies.

But small companies may not have all the resources needed to develop policies with as much detail as is suggested here. See the suggestions beginning with part 5 for adapting elements of this policy for the purposes of smaller organizations.

2.3 THREE STEPS TO A HEALTHY WORKPLACE

First, an organization needs a climate where employees feel confident that harassment will not be tolerated, and where they feel comfortable speaking out about harassing situations. Second, all members of the organization must know what the consequences of harassment are, and what to do if they become aware of harassment. Third, continual training and education are essential to maintaining an atmosphere of mutual respect.

A. Create the climate

- By changing workplace culture

Employees do not always report instances of harassment because they are afraid they will not be taken seriously, will suffer retaliation, or will be ostracized by co-workers or managers. Employers can start to change workplace culture by talking about harassment, distributing posters and pamphlets on the issue and involving employees in the preparation of the anti-harassment policy.

- By writing a policy

Develop a policy that clearly says that management will not tolerate any harassing situations, and make sure it is enforced.

- By making a policy statement

The first paragraph of any anti-harassment policy should be an unambiguous statement that the employer will not tolerate any harassing behaviour. Mentioning the laws that prohibit harassment will also help employees understand that the issue is serious.

- By involving employees

An important step in creating a healthy climate is to involve employees in developing the anti-harassment policy, if at all possible. This achieves several things:

  - It is a good way to introduce the topic and to start educating people about what harassment is, why it is unacceptable, and what they can do about it.

  - It means that people may be less afraid to speak up if they find themselves in, or witnessing, a harassing situation.

- It gives a strong, clear message that the employer supports the policy and will not tolerate harassment.
- It gives employees a personal interest in the policy, making them more likely to understand and support it.
- It means that employees will feel their contributions are valued, and it may increase their satisfaction with their workplace.

- Show that you mean it

Make sure the policy applies to senior management as well as to other employees. When situations arise, apply the policy fairly and according to the rules, no matter who is involved.

B. Set up the framework

- By explaining what harassment is, and giving examples

Sometimes employees do not realize that certain behaviour is inappropriate. Giving examples helps everyone know what is okay, and what is not. Some employees will change their behaviour once it is pointed out to them that others are hurt by it. This background can be shared at information sessions, staff meetings, orientation sessions, or by means of memos or e-mail, pay-slip notices, films, posters, brochures, videos or other communication tools.

- By giving clear direction for handling complaints

Give employees and managers clear guidelines for acceptable behaviour, and for resolving problems that do occur; let everyone know what is expected of them and what the consequences of harassing behaviour will be.

Even with anti-harassment education, there may be disagreements, misunderstandings, or people who just plain ignore the policy. So the policy needs to set out clear steps for employees to take if they believe they are being harassed. They need to know:

- who to talk to;
- procedures involved in resolving a complaint informally or formally;
- exactly what steps to take to initiate a complaint informally or

formally;

- how they will be protected; and,
- what is expected of them.

Managers and the people responsible for receiving, mediating, or investigating complaints must also know what to do, what kind of decisions they can take, and how to support the employees involved. The person or people accused of harassment must also know what their rights and responsibilities are, and what kind of penalties they may be facing. Everyone must know whether there will be an investigation, who will make decisions, and whether those decisions can be appealed. Employees should also know about the other organizations they can go to immediately or if the internal complaint process doesn't work for them: the Canadian Human Rights Commission, the Public Service Commission, their union, or the police in cases of physical or sexual assault.

- By clarifying roles

People who are acting as anti-harassment counsellors, mediators or investigators should be as free of bias as possible. They should clearly understand their role, and should be able to fulfill it without interference. They should not have to fulfill a second role that may be contrary to the interests of either of the people involved in the complaint. Employees should be fully informed of the role of the investigator, and an investigator should not present him or herself as a counsellor for the employee or suggest that the information being conveyed is confidential.

Case study: conflict of interest

In a case of racial harassment brought against a federal employer, the tribunal found there was a conflict of interest over the way the employee's internal complaint was handled. The organization's human rights advisor, who listened to the employee's complaint and advised him on how to proceed, later represented it throughout its investigation of the complaints and the subsequent human rights tribunal hearing. "Several of the witnesses that testified on behalf of [the organization]... refer to having counselling sessions with [the human rights advisor] regarding [the] complaints, in preparation for this hearing." For the tribunal, this was a clear case of "conflict and prejudice". (*Grover and Canadian Human Rights Commission v. National Research Council*)

C. Maintain the gains

- By educating current and prospective employees

Workshops, orientation sessions, films, brochures, posters, e-mail, memos and other tools can be used to educate current employees. New employees, or people wishing to be hired, should also know what their rights and responsibilities are in a harassment-free workplace.

This education should not be a one-time occurrence. Everyone will benefit from occasionally repeated information sessions or reminders about what the policy is and what it means.

- By training managers

Managers, by their example, are largely responsible for creating workplace culture. If managers at all levels show respect for all employees, show that they do not tolerate harassing behaviour, and make it clear that they support the anti-harassment policy, problem behaviour will be much less likely to take place. The more knowledgeable managers are about how to identify harassment and how to handle it, the more easily problems will be resolved, and the smoother the workplace will function.

- By training anti-harassment counsellors, mediators, and investigators

An anti-harassment policy should identify someone who is responsible for receiving informal and formal complaints, and someone who will investigate formal ones. These individuals may be specially trained employees, or they may be on contract, or assigned to these roles through some other arrangement, such as through an employer organization. They must have the appropriate training to ensure they are capable of carrying out their roles. Ultimately, their handling of any complaints will contribute to the policy's success or failure.

- By monitoring and reviewing the policy

Especially when a policy is new, it may need fine tuning to really succeed. Periodic review of the policy, including comments from staff or from employees who have been involved in harassment complaints in various capacities, will help you discover where the policy works well, and where it is inadequate. Workplace surveys, focus groups, union feedback, and discussion at management meetings are useful tools for gathering information. Being aware of high turnover, and conducting exit interviews with employees who are leaving the organization for any reason, can also contribute pertinent information. Over time, you will develop a policy that truly meets the needs of your unique workplace.

2.4 EDUCATING EMPLOYEES

Education of employees is crucial to a successful policy. This education can be done by outside consultants, by trained anti-harassment counsellors, or by human resources personnel trained in human rights and harassment issues, for example. Without anti-harassment education, employees may not know what harassment is, or may not know how to respond if they believe they are being harassed. Many problems can be stopped before they start simply by letting people know what behaviour is inappropriate, or how to deal with such behaviour.

All new employees and managers should attend education sessions of some kind. New employees could have anti-harassment education as part of their job training. Company-wide refresher courses from year to year will make sure no one misses or forgets this important information.

It is also essential that every employee have a copy of the policy, and understand it. A good distribution system, along with the education sessions, can achieve this goal. Some employers ask their employees to sign a statement that they have read and understand the harassment policy. You may wish to consider having your employees do this at the end of your anti-harassment training sessions to reinforce the fact that your organization takes the problem of harassment seriously.

2.5 WHAT SHOULD GO IN THE POLICY?

The following is an outline of the elements of successful anti-harassment policies. For more details, see Part 4: Checklist for an Anti-Harassment Policy: Medium and Large Organizations, and Part 7: Checklist for an Anti-Harassment Policy: Small Organizations.

Policy statement

Your employees should know that harassment is not tolerated in their workplace, and that you will take immediate steps to end any instances of harassment of which you become aware. Giving them a clear statement of this sort will help them feel confident if they need to complain about possible harassment, and it may well cut down on harassment in the first place by sending the message that it is unacceptable.

The law

Your employees should know what harassment is, and that it is against the law.

Employees' and managers' rights and responsibilities

All persons in your workplace need to know what is expected of them. A section of your policy should spell out their right to be free of harassment, responsibility to treat others with respect, and responsibility (if they have a management role) to stop harassment as soon as they become aware of it.

Direct action

Sometimes employees will be able to stop harassment just by speaking up or by writing the harasser. You can encourage them to do so. Keep in mind, however, that it may not always be possible for someone to communicate directly about the harassment with the person who is harassing them. Differences in power (age, sex, religion, race, and so on) or status (such as a subordinate job) may make this impossible. Even if a person does speak up, the harassment may not always stop. You will need to have other avenues for dealing with the situation.

Informal procedures

Informal procedures do not involve an investigation, a report, or an official decision. An employee who complains informally is enlisting the help of an anti-harassment counsellor, a manager, a human resources person, or someone else appointed and trained to act as an intervener. This person can give advice as to how to proceed, may help the employee write a letter or initiate a conversation, or may be able to approach the person accused of harassment to let them know their behaviour is causing discomfort or not appropriate.

Mediation

Mediation is a voluntary process whereby the people involved in a complaint meet with a neutral third party (mediator) who is trained to help them agree to a solution with which both are comfortable.

Mediation can work well when the people feel that they have equal power. It is not appropriate when one of the people feels at a disadvantage or feels vulnerable (perhaps because of a difference in age, sex, religion, race, level of authority, or other characteristic). It is also not appropriate when there is a case of severe harassment for which strong corrective action such as termination is likely to be required.

If the circumstances warrant it, mediation can come before a formal investigation. At the request of one of the parties and with the consent of the other, the appropriate person in your organization can appoint a qualified mediator, from within the organization or from outside it, who is acceptable to both the complainant and the alleged harasser. It is crucial that this person have mediation training. It is also crucial not to force

mediation on anyone. Either party has the right to refuse mediation. Each should also have the right to be accompanied and assisted by someone of their choosing during mediation.

Formal complaints

Informal procedures and mediation are not necessary first steps before filing a complaint. In any case, they may not succeed or may not be appropriate. Your employees then need to know how to file a formal complaint. A formal process includes filing the complaint, investigating, reporting the findings, decision-making, providing remedies for the victim, and corrective action for the harasser. It should include an appeal process. Employees need to be informed about each of these steps, how long each one will take, and what they can expect at the end of the process.

Employees should also know exactly what the consequences of harassment are before they find themselves involved in a complaint. Any possible redress, from an apology to financial compensation, to making up for a lost employment opportunity, should be spelled out in the policy. Likewise, possible corrective action for the harasser, from a written reprimand to leave without pay, to demotion, to firing, should all be clearly stated in the policy. Please see the sample policy for specific examples of remedies and corrective action, under the headings *Remedies for the Victim* and *Corrective Action for the Harasser*.

Other options

Anti-harassment counsellors should be able to tell employees which other organizations may be able to help with their complaint. The policy, too, should give this information. For example, unions may have grievance procedures that can deal with harassment. An employee who is not satisfied with the result of a harassment complaint can consult the Canadian Human Rights Commission. If the harassment involves physical or sexual assault, which are criminal offences, the police are the appropriate avenue.

Anti-harassment counsellors

Counsellors or anyone selected to fill a role of this type should have appropriate anti-harassment training, and should know the company's internal policy as well as what other options are available for dealing with the complaint, such as a union grievance or human rights complaint. They can make sure the employee understands the available options, and if requested, can help the employee to write a letter or to speak to the harasser. An anti-harassment counsellor can also inform the appropriate person in your organization that someone wants to try mediation. If other methods of dealing with the situation are inappropriate or unsuccessful,

the counsellor may help an employee file a formal complaint.

An anti-harassment counsellor should also be available to someone who is accused of harassment, to make sure that person understands the company policy, the possible penalties, and the other options available, such as mediation, or how the union or the human rights commission may be able to help. The same counsellor should not provide advice to both the person complaining of harassment and the person accused of harassment.

Counsellors should be named in the policy, and their duties and limits on their involvement clearly set out. It is desirable to have anti-harassment counsellors representing a cross-section of the workforce. Their qualifications should include the following:

- being discreet, respected, and trusted by employees;
- understanding the need for confidentiality in allegations of harassment;
- willing to be trained to advise employees; and,
- having previous experience with harassment complaints or human rights work is an asset.

Certain safeguards will help guard against conflict of interest:

- counsellors are advisors, not advocates;
- counsellors will not conduct the mediation or investigation; and,
- counsellors will not represent the organization in any formal proceeding or human rights complaint after having advised either party in the complaint.

Investigators

Investigators, like counsellors and mediators, must be appropriately trained. These people may be chosen from inside the company, if you have the resources to train them and to allow them time away from other duties. Or you may hire an outside consultant who is an expert in this field. It is important to check a consultant's training, experience, and credentials before hiring them for this sensitive work.

The investigator should interview the complainant, the alleged harasser, and any witnesses. Your policy should remind all employees that they have a responsibility to co-operate in an investigation. The investigator should

write a report and submit it to the person in your organization who is responsible for the management of the complaint. The report should state who was interviewed, what questions they were asked, what conclusions the investigator came to about the harassment, and what possible compensation, penalties, or other action may be appropriate in the particular case. Both parties should be given the opportunity to provide comments on the investigation report before it is finalized.

You may want to specify that the investigator must either submit a written report within a specific time, such as three weeks, or establish a new deadline and provide reasons why a longer period of time is required for the investigation.

Decision

An official decision must follow the investigation report. The decision should include a summary of the investigator's findings, and should detail what compensation or penalties will be assessed, and what other action, if any, will be taken. It is important that harassment victims are assured that disciplinary action, when appropriate, has been taken against the harasser. This may be achieved by providing the harassed victim precise information as to the disciplinary action taken. Another approach, preferred by some employers, is to inform the victim of the type of sanction (written reprimand, fine, suspension, etc.), but not the details. Some employers also publish anonymous descriptions of human rights cases and the corrective action taken by the organization. This can help to emphasize to staff that the employer takes the issue of harassment seriously and that there are consequences to inappropriate behaviour. If this is done, it is important that such case studies do not provide information which would identify the parties.

Time limits

Your employees will need to know how soon the investigation will begin, how long it will take and when they will be informed of the results. Shorter time lines are better; the sooner the harassment is dealt with, the less damage will be done and the sooner people can move on from the experience. Some policies specify that the investigation must begin with a specific period ranging from ten days to one month. It may also be appropriate to set a time limit of two to three weeks for completion of the investigation, and of one more week for any decisions regarding remedies and corrective action.

Appeals

You will need to have a provision for appeals, so that employees who are unhappy with the results of a formal complaint can put forward their

reasons and have them looked at.

Retaliation

You should make it clear that retaliation will not be permitted and will be considered a serious disciplinary breach, and penalized at least as severely as the initial harassment. All the good work done by an anti-harassment policy will be undone if people are allowed to retaliate against someone who has complained of harassment or who has cooperated in an investigation. Employees will feel vulnerable to renewed harassment, to losing their job, or to a number of other negative consequences, and may consequently be afraid to complain.

Unsubstantiated complaints

These are complaints in which the evidence indicates that harassment did not occur or that there was insufficient evidence to prove that harassment occurred. An unsubstantiated complaint that was made in good faith should not draw any negative consequences to the complainant. When the complaint of harassment is not proven, all records of the complaint should be removed from the personnel file of the person against whom the complaint was made.

Complaints made in bad faith

Complaints made in bad faith are those where the person complaining knows that the complaint is false. These types of complaints are very rare. Still they may happen, and your policy can set out the procedure for dealing with these complaints. A complaint made in bad faith should have remedies and penalties attached, equivalent to those that would result from harassment. For specific examples, see the sample policy for medium and large organizations under the headings *Complaints made in Bad Faith*, *Remedies for the Victim* and *Corrective Action for Harassers*.

Monitoring the policy

You should explain briefly how you plan to monitor the policy to ensure that it is working effectively. Let employees know how to give their feedback on the policy, and let them know how often you will be reviewing it. Semi-annually may be best when the policy is new. In any case, it is probably a good idea to review the policy every year to deal with any changes in corporate structure or other changes that could have an impact on the policy.

As part of the review of the policy you should ensure that:

- the policy was understood, trusted and used by employees;

- complaints were dealt with quickly, thoroughly and effectively; and,
- there was no retaliation against individuals who filed a complaint or cooperated in the investigation of a complaint.

Action Plan

The preparation of an action plan is an effective way of ensuring that concrete action is taken in a timely manner. The plan should include the following elements:

- ***development of an anti-harassment policy and procedures;***
- ***the selection process for harassment advisors, mediators and investigators. If any or all of these roles are to be assigned to staff, it should include a training plan;***
- ***preparation of anti-harassment training material and a schedule for provision of training to all staff. It should include information on refresher courses and training for new staff;***
- ***how management will communicate its commitment to providing a harassment-free working environment; and,***
- ***a system for monitoring the effectiveness of the anti-harassment policy, procedures and training programs (both for staff and advisors, mediators and investigators).***

The action plan should identify the area or individual responsible for each element and dates for completion of the various tasks.

HOW TO REACH THE CANADIAN HUMAN RIGHTS COMMISSION

If you need more information about the model policies, or would like to order any of our anti-harassment materials, please contact the Canadian Human Rights Commission in Ottawa or the nearest regional office.

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Canadian Human Rights Commission

PART 3: MODEL POLICY FOR MEDIUM AND LARGE ORGANIZATIONS

If you have many employees, this example of an anti-harassment policy can guide you in developing your own policy. It is written for distribution in XYZ Company, a fictitious organization.

3.1 ANTI-HARASSMENT POLICY STATEMENT

TO: ALL EMPLOYEES

DATE:

SUBJECT: Policy Statement for XYZ Company

Our commitment to a safe and respectful work environment

At XYZ Company, we are committed to providing a safe and respectful work environment for all staff and customers. No one, whether a manager, an employee, a contractor, or a member of the public, has to put up with harassment at XYZ Company, for any reason, at any time. Likewise, no one has the right to harass anyone else, at work or in any situation related to employment. This policy is one step toward ensuring that our workplace is a comfortable place for all of us.

Harassment is against the law

The *Canadian Human Rights Act* and the *Canada Labour Code* protect us from harassment. The *Criminal Code* protects us from physical and sexual assault. You have a right to live and work without being harassed, and if you are harassed, you can do something about it. This policy tells you what to do if you experience harassment at work, or if you, as a manager or an employee, become aware of a harassing situation.

XYZ Company promises to treat all complaints of harassment seriously, whether they are made informally or formally. We undertake to act on all complaints to ensure that they are resolved quickly, confidentially, and fairly. We will discipline anyone who has harassed a person or group of people. We will discipline managers who do not act properly to end harassment. At XYZ Company, we will not put up with harassment.

Sincerely,

Ms/Mr ABC, President

3.2 INFORMATION FOR VICTIMS

How to identify harassment

- Any unwelcome behaviour that degrades, demeans, humiliates, or embarrasses a person

Harassment is any behaviour that demeans, humiliates, or embarrasses a person, and that a reasonable person should have known would be unwelcome. It includes actions (e.g. touching, pushing), comments (e.g. jokes, name-calling), or displays (e.g. posters, cartoons). It may be a single incident or continue over time. The Canadian Human Rights Act protects employees and people receiving goods and services from harassment that is related to their race, national or ethnic origin, colour, religion, age, sex, marital status, family status, disability, pardoned conviction, or sexual orientation.

Disrespectful behaviour, also known as "personal" harassment, is also covered in this policy. While it also involves unwelcome behaviour that demeans or embarrasses an employee, the behaviour is not based on one of the protected grounds named above.

- Sexual harassment

Sexual harassment includes offensive or humiliating behaviour that is related to a person's sex, as well as behaviour of a sexual nature that creates an intimidating, hostile, or "poisoned" work environment, or that could reasonably be thought to put sexual conditions on a person's job or employment opportunities. A few examples are: questions and discussions about a person's sexual life; touching a person in a sexual way; commenting on someone's sexual attractiveness or sexual unattractiveness; persisting in asking for a date after having been refused; telling a woman she belongs at home or is not suited for a particular job; eyeing someone in a suggestive way; displaying cartoons or posters of a sexual nature; writing sexually suggestive letters or notes.

Sexual harassment is frequently more about power than about sex. It often occurs in situations where there is unequal power between the people involved, and is an attempt by one person to assert power over the other. The harassment can also occur when an individual is in a

vulnerable position because he or she is in the minority - the only woman, member of a visible minority, aboriginal person or person with a disability - and is, for example, ostracized by colleagues.

- Abuse of authority

Abuse of authority occurs when a person uses authority unreasonably to interfere with an employee or the employee's job. It includes humiliation, intimidation, threats, and coercion. It does not include normal managerial activities, such as counselling, performance appraisals, and discipline, as long as these are not being done in a discriminatory manner.

- It's mostly common sense

If the person who is accused of harassment should have known that the behaviour was unwelcome, he or she may be considered responsible, even for unintentional harassment. If an employer or manager knew or should have known that an inappropriate situation existed, and did nothing about it, the courts may impose penalties on that organization or person.

Examples of harassment

Harassment is any action that makes a colleague, employee, or client feel degraded, humiliated, or embarrassed. It includes, but is not limited to, jokes, comments, insults, touching, pinching, leering, posters, cartoons, e-mail, telephone calls. It includes conditions of employment that are degrading, humiliating, or sexual, and requests, e.g. for sex, that the employee believes he or she must go along with to keep the job or get a promotion, raise, transfer, or some other benefit of employment, or to avoid being penalized.

Some examples of harassment include:

- unwelcome remarks, slurs, jokes, taunts, or suggestions about a person's body, clothing, race, national or ethnic origin, colour, religion, age, sex, marital status, family status, physical or mental disability, sexual orientation, pardoned conviction, or other personal characteristics;

- unwelcome sexual remarks, invitations, or requests (including persistent, unwanted contact after the end of a relationship);

- displays of sexually explicit, sexist, racist, or other offensive or derogatory material;

- written or verbal abuse or threats;
- practical jokes that embarrass or insult someone;
- leering (suggestive staring) or other offensive gestures;
- unwelcome physical contact, such as patting, touching, pinching, hitting;
- patronizing or condescending behaviour;
- humiliating an employee in front of co-workers;
- abuse of authority that undermines someone's performance or threatens her or his career;
- vandalism of personal property; and,
- physical or sexual assault.

Where harassment happens

- Any place or event related to employment

Harassment can take place in the workplace itself, or outside of the workplace in a situation that is in some way connected to work. For example, during delivery trips, off-site meetings, business trips, and any other event or place related to employment or when the employee is present in the course of employment. Harassment will not be tolerated in any work-related place or at any work-related event.

What isn't harassment?

- Consensual banter or relationships

Two or more employees bantering back and forth is not harassment if everyone involved is in agreement. But if any employee feels uncomfortable with this behaviour, and the behaviour continues even after that person has expressed their discomfort, or if the others involved should have known the person was uncomfortable, then it is harassment. This type of harassment can create what is known as a "poisoned work environment", where employees do not feel safe and feel consistently humiliated.

Employees flirting with each other, or becoming involved in a romantic

or sexual relationship, are not harassing each other, as long as the relationship is consensual. If one of the employees changes her or his mind, and the other person persists in trying to continue the relationship, this is harassment.

- Legitimate management intervention

Appropriate performance reviews, counselling, and discipline are not harassment.

Who can be harassed?

- Vulnerable employees

Anyone can be harassed. Usually, the most vulnerable people are those in lower-paying or less secure jobs; those of a different race or colour than the majority of workers in non-traditional types of employment; women; people with a visible or invisible disability; lesbians and gay men; people who are older or younger than their co-workers; and people whose religion sets them apart from the

majority. People also harass others for more than one reason at a time: a combination of racial and sexual harassment, or sexual and disability harassment, for example.

But even managers can find themselves being harassed. No matter what your position in the organization, or your personal characteristics, if you believe you are being harassed, report the incident.

- Job applicants, contractors, customers

Men, women, managers, colleagues, applicants for employment, contractors, customers, and competitors can all find themselves being harassed. Most frequently, men harass women, but harassment can also happen from women to men and between people of the same sex.

Who harasses others?

Just as with the people being harassed, anyone can harass another person. Men, women, managers, colleagues, contractors, customers, and competitors can all behave in a harassing manner. Someone may harass another person because he or she does not realize that the behaviour in question is offensive. Or the harassment can be intentional. Either way, it is unacceptable. If you knew, or if a reasonable person should have known, that your behaviour was offensive or degrading, you may be held responsible for the harassment.

3.3 EMPLOYEES' RIGHTS AND RESPONSIBILITIES

This section will tell employees how they can expect to be treated at work, and what employees' responsibilities are toward co-workers, supervisors, and the public. Specific information about the complaint process is in the Procedures section, below.

- Respect others

Each employee has the right to be treated fairly and respectfully in the workplace. Each employee also has the responsibility to treat co-workers and customers in a way that respects individual differences. No matter what your position, or that of the people with whom you interact at work, showing mutual respect and consideration will make work easier for all of us. If you have doubts about whether a joke, comment, or other behaviour will embarrass, humiliate, degrade, or otherwise bother someone, then don't say or do it.

- Speak up

If someone behaves in a way that offends, harms, humiliates, or degrades you, do not put up with it. First, if you feel that you can speak to that person, do so. Let them know how you feel. Tell them the behaviour is inappropriate. If they continue the behaviour, or if you do not feel you can speak directly to the person, you have several options, from speaking to an anti-harassment counsellor to filing a formal complaint. For more details, see the Procedures section of this policy.

- Report harassment

If you observe a co-worker or other person behaving in a way that seems to be embarrassing or harassing someone else, you can and should speak up. You can let them know in a respectful way that you think the behaviour is inappropriate. If you think someone is being harassed, you can let them know you support them in ending the situation. Depending on the circumstances, you may want to say something as the behaviour is happening, or you may decide to speak privately with either of the people involved. You can also speak to a manager or an anti-harassment counsellor, although you may want to check first with the person whom you believe is being harassed. They may not want to report the harassment, or may want to deal with it themselves.

All staff have a responsibility to co-operate in the investigation of a harassment complaint. Anyone who gives evidence in an investigation,

or who is otherwise involved in the process, must keep this information confidential, except as is necessary to deal effectively with the complaint. These are serious issues, and people's privacy must be respected. Even once a complaint is resolved, confidentiality and respect are important.

3.4 EMPLOYERS' AND MANAGERS' RESPONSIBILITIES

For managers, and for XYZ Company as an entity, this section contains an outline of how you should conduct yourself in relation to employment, and how to handle cases of harassment.

Specific information about how to handle an informal or formal harassment complaint, or what to do if there has been no complaint, is in the Procedures section, below.

- Put a stop to harassment

XYZ Company has full responsibility for making sure our work environment is free from harassment. All managers at XYZ Company also have a responsibility to stop harassment. If you become aware of harassment in your work area, or elsewhere in the company, you must do everything you can to stop it, whether or not a complaint has been made. Not knowing is not an excuse. If a reasonable person should have known that harassment was going on, you will still be held responsible if you let the situation continue. Managers who ignore harassment will not only face legal responsibility, but will be disciplined by XYZ Company.

- Be aware

Being aware of the following things can help alert you to problem situations:

  - an unexplained change in an employee's performance;
  - someone suddenly taking more sick leave;
  - an employee isolating her or himself, seeming distracted, not participating in office socializing;
  - rumours; or,
  - awkwardness or discomfort between two or more employees.

- Listen to employees

If something doesn't seem right, talk to the employee you are worried about. Often, having someone listen to them can help a person talk about a problem. Of course, we encourage managers to be sensitive to employees' rights and dignity, and to keep these discussions and any ensuing discussions confidential, except as is absolutely necessary to deal effectively with the complaint.

3.5 ANTI-HARASSMENT POLICY PROCEDURES

3.5.1. If you are being harassed

The following steps will tell you what to do if you or someone else is being harassed. This section will also tell you exactly what you can expect from the complaint process, what the possible remedies and penalties for harassment are, how to appeal, and how to give feedback on the policy to XYZ Company.

- Speak up

The first thing to do if you are being harassed is to tell the person harassing you to stop, if possible. Let them know that you are embarrassed, humiliated, demeaned, or otherwise bothered by what they are doing or saying. Often, a person may not be aware that her or his behaviour is bothersome, and will change the behaviour once they realize this.

- Make notes

You could speak to the person directly, or write them a letter. If you write a letter, date it and keep a copy. If you speak to them, you may want to tell a trusted friend what you have done and why. You should also make a note of what the bothersome behaviour was, the date it happened, how you felt, what you did about it, and who else was present, if there were witnesses. Ideally, the harassment will stop. If it does not, continue to keep notes. These will be useful later, if there is an investigation.

Informal procedures

- Speak to a manager or anti-harassment counsellor

It may be that communicating directly with the person will not

be enough, or that you feel unable to deal with her or him directly. In that case, you can speak to your supervisor, another manager, or one of the following anti-harassment counsellors.

- _____
- _____
- _____
- _____
- _____

The person you speak to will ask you for details of what happened, will make sure you understand the policy and any other options you have (such as a union grievance or human rights commission complaint), and will ask how you want to proceed. You may ask them to help you write a letter or to speak to the harasser on your behalf. You may ask them to arrange for mediation between you and the person whose behaviour offends you. If these attempts to resolve the situation don't work, you can also ask the anti-harassment counsellor to help you file a formal complaint. The informal procedures are optional. You may also immediately file a formal complaint or, if you feel that would not be productive, you may go directly to the Canadian Human Rights Commission.

- Mediation

If the circumstances permit it, mediation can come before a formal investigation. Mediation is a process by which a neutral third party helps the people involved in the complaint reach a solution which is acceptable to both parties. If you want to work toward a mediated settlement, the Director of Personnel (or the Vice President of XYZ Company, if the Director of Personnel is a party to the complaint) will appoint a qualified mediator, from within the organization or from outside it, who is acceptable to both parties, is not otherwise involved in the complaint, and who will not be asked to represent the company at any stage of any proceedings related to the complaint.

However, either party has the right to refuse mediation. You are the only one who can decide if mediation is appropriate for you. Do not agree to it if you feel pressured into it, or feel that you are at a disadvantage or vulnerable because of your age, sex, race, colour, religion, sexual orientation, economic position, level of authority, or for any other reason. If someone

suggests mediation but you are uncomfortable with it, you can say so, and it will not be part of the complaint process. If mediation does occur, each person has the right to be accompanied and assisted during the sessions by someone with whom they feel comfortable.

Formal complaints

If the informal route for resolving a harassing situation does not succeed or is not appropriate, XYZ Company supports its employees in filing a formal complaint. It will be investigated, either by a specially trained person from within the organization or a consultant. This person will investigate the complaint thoroughly. He or she will interview the complainant, the alleged harasser, and any witnesses. All employees have a responsibility to co-operate in the investigation.

The investigator will need to know:

- your (the complainant's) name and position;
- the name and position of the alleged harasser;
- details of what happened;
- dates, times, and how often these things occurred;
- where they happened; and,
- the names of any witnesses.

You will need to be prepared to supply this information.

If you are the complainant, you have the right:

- ***to file a complaint and have it dealt with promptly, without fear of embarassment or reprisal***
- ***to have a person of your choice accompany you during the process***
- ***to make sure that no record of the complaint is placed on your personnel file, as long as it was made in good faith***
- ***to be informed about the progress of your complaint***

- ***to be informed of the type of corrective measures that will result from the complaint***
- ***to receive fair treatment***

3.5.2 If you are accused of harassment

- Informal procedures

If someone complains to you informally about your behaviour, take a good look at it. It may be that without intending to you have spoken or acted in a way that has offended, humiliated, or degraded another person or group of people. It is your responsibility to change your behaviour if it is harassing or offensive to others. You may also want to consider apologizing.

Keep written notes of any conversation you have where someone suggests you have harassed them or another person. Record the conversation and the date it happened, how you felt, and what you did, if anything. Also make notes of your version of the alleged harassment, the date it occurred, and who else was present, if there were any witnesses.

If you and the person who is complaining to you are unable to resolve the situation, you can turn to an anti-harassment counsellor for advice.

- Mediation

If someone has accused you of harassment, and you have not been able to resolve the situation with that person informally, mediation is a possible next step. Mediation may make a formal complaint unnecessary. You can ask for mediation; or you may agree if it is suggested to you. You do not have to agree, however, if you think that you are being pressured into something that does not feel right to you.

If you want to work toward a mediated settlement, the Director of Personnel (or the Vice President of XYZ Company, if the Director of Personnel is a party to the complaint) will appoint a qualified mediator, from within the organization or from outside it, who is acceptable to both parties. If mediation does become part of the informal process, each person has the right to be accompanied and assisted during the sessions by someone of their choosing.

- Formal complaints

If someone files a formal complaint about your behaviour, you will have to participate in the investigation. You can ask an anti-harassment counsellor for advice. You will be expected to co-operate, give your perspective on what happened, and, if the investigation shows that you did harass another person or group of people, you will be expected to change your behaviour. You will also be subject to disciplinary action.

If you are the individual accused of harassment, you have the right:

- ***to be informed of the complaint***
- ***to be given a written statement of the official allegations, and to respond to them***
- ***to have a person of your choice accompany you during the process***
- ***to be informed about the progress of the complaint***
- ***to receive fair treatment***

3.5.3 Other employees

All employees are expected to cooperate in the investigation of complaints and efforts to resolve them. Employees should be mindful of the sensitivities of the parties and should keep any information related to complaints confidential.

3.5.4 The Investigation and Subsequent Action

- Written report

The investigator will submit a written report to the Director of Personnel (or the Vice President of XYZ Company, if the Director of Personnel is involved in the complaint). The investigator will decide whether, on a balance of probabilities, there is enough evidence to conclude that harassment occurred. He or she will also identify all possibilities for resolving the situation, and will recommend one or more courses of action. If harassment has occurred, the Director of Personnel will then decide (in consultation with senior

management, if necessary) what remedies will be provided to the victim, the disciplinary action to be imposed on the harasser; and whether the people in question can continue in their current work areas.

- Decision

The Director of Personnel will inform the person who filed the complaint and the harasser of any disciplinary action, remedies, and changes in work within a week after the investigator has handed in the report. Corrective action , remedies, and changes in work will be instituted within one week of the people involved being informed of the decision.

- Separation of the complainant and alleged harasser

If the complainant and the alleged harasser are in a subordinate/supervisor relationship, the Director of Personnel may decide to assign one or both of them to a different work area during mediation or investigation. Co-workers may also be separated during an investigation, if necessary.

3.5.5 Remedies for the Victim

XYZ Company will make every reasonable effort to remedy the effects of the discrimination. A person who has been harassed may receive one or more of the following remedies, depending on the severity of the harassment and what he or she lost because of it:

- an oral or written apology from the harasser and XYZ Company;
- lost wages;
- a job or promotion that was denied;
- compensation for any lost employment benefits, such as sick leave;
- compensation for hurt feelings; and/or
- a commitment that he or she will not be transferred, or will have a transfer reversed, unless he or she chooses to move.

No record of the complaint, investigation or decision will go in the employee's personnel file, if the complaint was made in good faith. Any unfavourable work review or comments that were placed in the complainant's personnel file because of the harassment will be removed from the file.

3.5.6 Corrective action for harassers

Someone who has harassed another person will be subject to one or more of the following forms of discipline, depending on the severity of the harassment:

- a written reprimand;
- a fine;
- a suspension, with or without pay;
- a transfer, if it is not reasonable for the people involved to continue working together
- a demotion; or
- dismissal.

In most cases, the harasser will also be required to attend an anti-harassment training session.

If the investigation does not find evidence to support the complaint, there will be no documentation concerning the complaint placed in the file of the alleged harasser. When the investigation reveals harassment occurred, the incident and the discipline which is imposed on the harasser will be recorded in the harasser's file.

3.5.7 Unsubstantiated complaints

If a person, in good faith, files a harassment complaint that is not supported by evidence gathered during an investigation, that complaint will be dismissed, and no record of it will be put in the accused harasser's file. As long as the complaint was made in good faith, there will be no penalty to the person who complained, and no record in her or his file.

3.5.8 Complaints made in bad faith

In the rare event that the complaint was made in bad faith--in other words, the person making it had absolutely no basis and deliberately and maliciously filed the complaint -- that person will be disciplined and a record of the incident will be put in her or his file.

Penalties for someone who complains in bad faith will be the same as for a case of harassment (see Corrective action for harassers) and will depend on the seriousness of the situation. Compensation for the person falsely accused may include steps to restore any lost reputation, and any of the remedies that would be available in a case of harassment (see Remedies for the victim).

3.5.9 Confidentiality

XYZ Company will not disclose a complainant's or alleged harasser's name, or any circumstances related to a complaint, to anyone, except as necessary to investigate the complaint or take disciplinary action related to the complaint, or as required by law. Managers involved in a complaint are reminded to keep all information confidential, except in the above circumstances.

3.6 RETALIATION

Retaliation is considered a serious disciplinary breach. Anyone who retaliates in any way against a person who has complained of harassment, given evidence in a harassment investigation, or been found guilty of harassment, will themselves be considered guilty of harassment and penalized accordingly. The possible penalties are the same as those assessed against harassers.

3.7 APPEALS

A person directly involved in a complaint may appeal to the Vice President of XYZ Company (or the President, if the Vice President made the initial decision or is a party to the complaint) within a week after learning of the decision. If the Vice President believes there is sufficient reason to re-investigate or to change the penalty, compensation, or work assignment, he or she may make that decision within one week.

3.8 OTHER OPTIONS

3.8.1 Union grievance procedures

The union has procedures allowing you to bring a grievance in

certain cases of alleged harassment. Check with your union representative or an anti-harassment counsellor if you want more information about filing a grievance.

3.8.2 Outside organizations

A complainant may, within one year of the behaviour complained of, file a complaint with the Canadian Human Rights Commission if the harassment was because of race, national or ethnic origin, colour, religion, age, sex, marital status, family status, physical or mental disability, pardoned conviction, or sexual orientation. Information on filing a complaint can be obtained by phoning the Commission's toll free number 1-888-214-1090. A grievance under the *Public Service Staff Relations Act*, or *Criminal Code* proceedings may also be available. The *Criminal Code* protects people from physical and sexual assault.

3.9 MONITORING

XYZ Company will monitor this policy and make adjustments where necessary. We will review it after the first six months, after the first year, and annually from then on. If you have any concerns with the policy, please bring them to the attention of the Director of Personnel. Your comments are always welcome. There is no place for harassment in a workplace that strives for equality and respect for all its members. XYZ Company has committed itself to that goal, and we will do our utmost to achieve it.

PART 4: CHECKLIST FOR AN ANTI-HARASSMENT POLICY: MEDIUM AND LARGE ORGANIZATIONS

Developing a policy

Consultation with unions, employee representatives or employees about content of policy, penalties and remedies, identity of anti-harassment counsellors

Content of the policy

Policy statement--management supports a harassment-free workplace

The law

Employees' responsibilities and rights

- the right to a harassment-free workplace
- the responsibility to treat other employees with respect
- the responsibility to speak up when harassment occurs
- the responsibility to report harassment to the appropriate person
- confidentiality

Supervisors', managers', and employers' responsibilities

- treat all employees, clients, suppliers, contractors with respect
- report or investigate all complaints
- set a good example
- refuse to tolerate harassment

An undertaking that allegations of harassment will be dealt with seriously, speedily and confidentially

Descriptions of harassing behaviour

Procedures

- practical guidelines for employees and management
- informal and formal ways of proceeding
- encourage employees to choose the informal approach first
- mediation
- detailed steps to be taken in complaints
- time frames
- who is responsible for decisions
- appeals

- information about other agencies that deal with harassment

Remedies, corrective action, and safeguards

- possible remedies
- the range of penalties for a harasser
- whether information about the complaint will be included in a harasser's file
- information about the complaint will not be put in the complainant's personnel file, when complaint is in good faith

Protection against victimization or retaliation for employees who complain of harassment, or who testify in an investigation

Selection of counsellors and investigators

The following questions should be considered during the selection of anti-harassment counsellors, mediators and investigators

- are trusted by employees
- are outside chain-of-command or line management
- whether they are employees or outside contractors
- have appropriate experience and training
- will ensure confidentiality
- can be reached easily by employees
- whether they will deal with informal or formal complaints
- whether they will mediate
- whether they will investigate
- to whom they report
- whether they will advise management
- whether they will educate employees

- what their role is in advising management about specific cases of harassment
- do not fulfill double roles, e.g. do not do both mediation and investigation; do not represent the organization at a human rights hearing

Education

Communication and circulation of the policy to all employees and managers, current and new, through

- orientation or information session
- staff meetings
- memos or e-mail
- pay slip notices
- films
- posters
- videos
- brochures

Education of all staff

- training managers to react appropriately, handle cases of harassment appropriately, maintain the anti-harassment atmosphere
- training employees to respect each other, maintain the anti-harassment atmosphere
- training harassment counsellors and investigators to perform their respective roles
- make ongoing anti-harassment training part of other training sessions, such as: management training, induction programmes for new employees, courses for union-management committees, social skills training for employees, assertiveness training for women employees or others

Monitoring

A commitment to periodic review of the policy

- openness to employee comments
- solicitation of feedback from counsellors, managers, and employees
- exit interviews with personnel leaving the organization
- make necessary adjustments to policy and procedures

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PART 5: SPECIAL CONSIDERATIONS FOR SMALL ORGANIZATIONS

The same principles apply

The principles of an effective anti-harassment policy in a small organization are the same as for larger employers. Your anti-harassment policy must be:

- unequivocally supported by management
- clear
- fair
- known to everyone, at all levels of your organization
- applied to everyone, at all levels of your organization

Limited resources

All employers are liable for harassment by their employees, especially if they did not take steps to prevent harassment in the workplace, or did not treat it seriously once it happened. The difference, of course, is that smaller companies will frequently not have the financial resources, or the personnel, to allow them to develop the same kind of reporting, mediation, and investigation routes as a larger company.

Written policies give important information

An employer with a very small company will find it fairly simple to inform employees verbally that harassment will not be tolerated, and that anyone harassing another will be disciplined. Still, employees need to have consistent and easily accessible information about what specific behaviour is unacceptable, what the procedure is if they want to complain, what kinds of discipline will be enforced, and what remedies they can expect if they are harassed. They will also need to know what other agencies can deal with a complaint. This is where a written policy is useful and important. But it may not need to be as complex or formal as that of a larger organization.

Close relationship with employees

The manager's role is crucial in a small company. Managers will likely have a closer day-to-day knowledge of what happens in the workplace,

and will be in an even better position than in a large company to be aware of harassing situations, take direct action, and set an example of appropriate behaviour. In fact, employers with a smaller number of employees will likely have much more direct contact with those employees themselves, and a closer working relationship. The employer may be the only manager, or may have a small number of managers.

Provide alternate avenues of complaint

This may, however, lead to problems for small employers. It may be more difficult to provide alternate avenues of complaint; for example, if an employee's supervisor is the alleged harasser, and is also the only person of authority in the workplace. It is especially important for employees in small companies to know what other agencies are available to help them. It is also especially important for the employer to have a strong and visible commitment to a harassment-free workplace. For example, a trusted senior employee might be given the responsibility of receiving harassment complaints and dealing with them in the initial stages, and the employer her or himself must be available to employees.

Combine with others to increase resources

An employer without a lot of resources of her or his own can get information and support from other agencies, or from others in the same industry. The Canadian Human Rights Commission has a casebook and an informative anti-harassment brochure, explaining what harassment is and suggesting options for dealing with it, that employers can distribute to their employees. Small companies in the same industry might want to combine resources to develop a joint policy, with people from each company serving as anti-harassment educators, counsellors, mediators, and investigators. A number of employers could form a mutually supportive advisory group. Individual employers can also attend relevant seminars or training sessions given by employer organizations, small business associations, or industry associations. These organizations may also have brochures, posters, and so on that an employer could use in the workplace.

Employees must know about the policy

As with larger companies, prospective employees and new staff should be informed of the anti-harassment policy during their hiring interviews, and during their initial training. Ongoing education is also important; reminding employees of the policy and recirculating it annually during a staff meeting is an example. And periodic review of the policy, including feedback from employees, is essential.

Some employers ask their employees to sign a statement indicating that they have read and understood the anti-harassment policy. Ideally, this would be combined with anti-harassment training which would include an explanation of what constitutes harassment and the options available to anyone who believes they are being harassed.

PART 6: MODEL POLICY FOR SMALL ORGANIZATIONS

If you have a small organization, you may find this abbreviated anti-harassment policy more appropriate for your workplace than the model policy in section 3. It is written for distribution in XYZ Company, a fictitious organization.

6.1 ANTI-HARASSMENT POLICY STATEMENT

TO: ALL EMPLOYEES

DATE:

SUBJECT: Policy Statement for XYZ Company

Our commitment

At XYZ Company, we are committed to providing a safe and respectful work environment for all staff and customers. No one, whether a manager, an employee, a contractor, or a member of the public, has to put up with harassment at XYZ Company, for any reason, at any time. And no one has the right to harass anyone else, at work or in any situation related to employment. This policy is one step toward ensuring that our workplace is a comfortable place for all of us.

Harassment is against the law

The *Canadian Human Rights Act* and the *Canada Labour Code* protect us from harassment. The *Criminal Code* protects us from physical and sexual assault. You have a right to live and work without being harassed, and if you are harassed, you can do something about it.

Employees' responsibilities

All employees have the responsibility to treat each other with respect, and to speak up if they or someone else is being harassed. All employees have a responsibility to report harassment to the appropriate person. All employees are responsible for respecting the confidentiality of anyone involved in a harassment complaint.

Managers' responsibilities

Each manager and supervisor is responsible for fostering a safe working environment, free of harassment. Managers must set an example for appropriate workplace behaviour, and must deal with situations of harassment immediately on becoming aware of them, whether or not there has been a complaint. Courts may impose penalties on the employer and the manager, even if neither of them was actually involved in or aware of the harassment but should have known about it. A manager that did nothing to prevent harassment or to mitigate its effects may find her or himself facing financial and legal consequences.

XYZ Company's responsibilities

As an employer, XYZ Company also has a responsibility to be aware of what is happening in the workplace. As President, I promise to treat all incidents of harassment seriously. I undertake to act on all complaints and to ensure that they are resolved quickly, confidentially, and fairly. I will discipline anyone who has harassed a person or group of people or who retaliates in any way against anyone who has complained of harassment, given evidence in harassment investigations, or been found guilty of harassment. I will discipline managers who do not act properly to end harassment. At XYZ Company, we will not put up with harassment.

Sincerely,

Ms/Mr ABC, President.

6.2 INFORMATION FOR VICTIMS

What is harassment?

Harassment is any behaviour that demeans, humiliates, or embarrasses a person, and that a reasonable person should have known would be unwelcome. It includes actions, comments, or displays. It may be a single incident or continue over time.

Some examples of harassment include:

- unwelcome remarks, slurs, jokes, taunts, or suggestions about a person's body, clothing, race, national or ethnic origin, colour, religion, age, sex, marital status, family status, physical or mental disability, sexual orientation, pardoned conviction, or other personal characteristics;
- unwelcome sexual remarks, invitations, or requests (including persistent, unwanted contact after the end of a sexual relationship);
- displays of sexually explicit, sexist, racist, or other offensive or derogatory material;
- written or verbal abuse or threats;
- practical jokes that embarrass or insult someone;
- leering (suggestive staring) or other offensive gestures;
- unwelcome physical contact, such as patting, touching, pinching, hitting;
- patronizing or condescending behaviour;
- humiliating an employee in front of co-workers;
- abuse of authority that undermines someone's performance or threatens her or his career;
- vandalism of personal property; and/or
- physical or sexual assault.

The Canadian Human Rights Act protects employees and customers from harassment that is related to their race, national or ethnic origin, colour, religion, age, sex, marital status, family status, disability, pardoned conviction, or sexual orientation.

Disrespectful behaviour, known as "personal" harassment, is also covered in this policy. While it also involves unwelcome behaviour that demeans or embarrasses an employee, the behaviour is not based on one of the protected grounds named above.

Harassment can take place between co-workers, between a manager and employee, between people of the opposite sex or of the same sex, between an employee and a client, or between an employee and a job applicant.

What isn't harassment?

Consensual banter or romantic relationships, where the people involved agree with what's happening, are not harassment. Appropriate performance reviews, counselling, or discipline by a supervisor or manager are not harassment.

Where harassment happens

Work-related harassment can take place in the workplace itself, or outside of the workplace in a situation that is in some way connected to work. For example, employees (and clients) must be protected from harassment during delivery trips, off-site meetings, business trips, and any other

event or place related to employment or when the employee is present in the course of employment.

6.3 COMPLAINT PROCEDURES

- Speak up

If you believe you are being harassed, speak up right away. If possible, tell the person that you are not comfortable with their behaviour, and want it to stop. Usually, that will be all you need to do. You can speak to them directly, or write them a letter (date it and keep a copy). In addition, tell someone you trust what is going on.

- Keep notes

Record all unwelcome or harassing behaviour. Write down what has happened, when, where, how often, who else was present, and how you felt about it. Write down every instance of harassment.

- Report it

If the harassing behaviour occurs again, or if you are unable to deal directly with the person harassing you, report it to the person designated to receive complaints. At XYZ Company, the designated anti-harassment person is _____. If that person is involved in the complaint, please see Ms/Mr ABC, President of XYZ Company, personally. If for some reason you are unable to report harassment to someone at XYZ Company, you might be able to go to your union, or the police (for a case of sexual or physical assault). You may also go directly to the Canadian Human Rights Commission.

Once a person reports harassment, the designated anti-harassment person will ask questions such as what happened, when, where, how often and who else was present and will keep notes of this conversation.

- Informal procedures

You may want to proceed informally at first. This means you can ask the designated person to help you communicate with the other person, or to speak to them on your behalf, without going through actual mediation or a formal complaint. The informal approach may not always be possible or successful, but when it is, you may be able to resolve the situation quickly.

- Mediation

It may be appropriate to attempt to resolve the complaint through mediation before going to a formal investigation. If a qualified person from outside the organization is available to act as a mediator, and the complainant and alleged harasser agree, that person will attempt to help the parties settle the complaint. If no one is available, the designated person may help settle the complaint, if the parties agree. The mediator should not be involved in investigating the complaint, and should not be asked to represent the company at any stage of any proceedings related to the complaint.

However, either party has the right to refuse mediation. You are the only one who can decide if mediation is appropriate for you. Do not agree to it if you feel pressured into it, or feel that you are at a disadvantage or vulnerable because of your age, sex, race, colour, religion, sexual orientation, economic position, or for any other reason. If someone suggests mediation but you are uncomfortable with it, you can say so, and it will not be part of the complaint process. If mediation does become part of the process, each person has the right to be accompanied and assisted during mediation sessions by someone they choose.

- The Investigation

If you want to go ahead with a formal complaint, it will be investigated, either by a specially trained person from within the organization or a consultant. This person will investigate the complaint thoroughly. He or she will interview the complainant, the alleged harasser, and any witnesses. All employees have a responsibility to co-operate in the investigation.

Both you and the alleged harasser have the right to be accompanied by someone with whom you feel comfortable during any interviews or meetings.

An investigation will involve:

- getting all pertinent information from the complainant;
- informing the alleged harasser of the details of the complaint, and getting her or his response
- interviewing any witnesses;
- deciding whether, on a balance of probabilities, the harassment did take place; and,
- recommending appropriate remedies, penalties, or other action

- Substantiated complaints

If the investigator decides the complaint is valid, he or she will report in writing to the President, ideally within a week of completing the investigation. The investigator will recommend appropriate remedies and disciplinary action, and any other necessary action. The President will decide what action to take, and will inform both parties of the decision, in writing, ideally within a week of the report being submitted.

- Remedies for the Victim

Remedies for a person who has been harassed will include any of the following, depending on the nature and severity of the harassment:

- an oral or written apology from the harasser and XYZ Company;
- lost wages;

- a job or promotion that was denied;
- compensation for any lost employment benefits, such as sick leave;
- compensation for hurt feelings; and/or
- a commitment that he or she will not be transferred, or will have a transfer reversed, unless he or she chooses to move.

- Corrective action for harassers

Corrective action for harassers will include any of the following, depending on the nature and severity of the harassment:

- a written reprimand;
- a fine;
- a suspension, with or without pay;
- a transfer, if it is not reasonable for the people involved to continue working together;
- a demotion; or
- a dismissal.

Harassers may also be obliged to attend an anti-harassment training session.

- Unsubstantiated complaints

If there is not enough evidence to support an allegation of harassment, the investigator will not recommend any penalties or remedies.

- Complaints made in bad faith

In the rare event that the complaint was made in bad faith, that is deliberately and maliciously filed knowing it had absolutely no basis, the complainant will be subject to the same penalties as a harasser. The person unjustly accused of harassment will have her or his reputation restored, and will be given the benefit of any necessary remedies that would be given in a case of harassment.

- Retaliation

Anyone who retaliates in any way against a person who has been involved in a harassment complaint, will be subject to the same penalties as a harasser.

- Confidentiality

XYZ Company will not disclose any information about a complaint except as necessary to investigate the complaint or to take disciplinary action, or as required by law. It encourages employees and managers to respect confidentiality in the same way.

- Time limits

Managers have a responsibility to make sure harassment ends as soon as they become aware of it. Complaints will be resolved as quickly as possible, ideally within one month of being made.

Complainants should be aware that there is a one-year time limit for filing a complaint with the Canadian Human Rights Commission.

- Union grievances

Union grievance procedures may be available in certain cases of harassment. Please speak to your union representative for more information about filing a grievance.

- Other options

An employee of XYZ Company who is not satisfied with the result of a harassment complaint can consult the Canadian Human Rights Commission. Information on filing a complaint can be obtained by phoning the Commission's toll-free number 1-888-214-1090.

If the harassment involves physical or sexual assault, which are criminal offences, the police are the appropriate avenue.

6.4 POLICY CHANGES

If you have questions or comments about the policy or its application, please speak to the designated person or to the president of XYZ Company. We will make changes to the policy as necessary, and will review it regularly.

PART 7: CHECKLIST FOR AN ANTI-HARASSMENT POLICY: SMALL ORGANIZATIONS

Content of the policy

Policy statement--management supports a harassment-free workplace

The law

Employees' responsibilities and rights

- the right to a harassment-free workplace
- the responsibility to treat other employees with respect
- the responsibility to speak up when harassment occurs
- the responsibility to report harassment to the appropriate person
- confidentiality

Supervisors', managers', and employers' responsibilities

- treat all employees, clients, suppliers, contractors with respect
- report or investigate all complaints
- set a good example
- refuse to tolerate harassment

An undertaking that allegations of harassment will be dealt with seriously, speedily and confidentially

Descriptions of harassing behaviour

Procedures

- practical guidelines for employees and management
- informal and formal ways of proceeding

- encourage employees to choose the informal approach first
- mediation
- detailed steps to be taken in complaints
- time frames
- who is responsible for decisions
- appeals
- information about other agencies that deal with harassment

Corrective action, safeguards and remedies

- the range of penalties for a harasser
- whether information about the complaint will be included in a harasser's file
- remedies
- information about the complaint will not be put in the complainant's personnel file, when complaint is in good faith

Protection against victimization or retaliation for employees who complain of harassment, or who testify in an investigation

Education

Communication and circulation of the policy to all employees and managers, current and new, through

- orientation or information session
- staff meetings
- memos or e-mail
- pay slip notices
- films
- posters

- brochures

Education of all staff

- training managers to react appropriately
- handle cases of harassment appropriately
- maintain the anti-harassment atmosphere
- training employees to respect each other
- maintain the anti-harassment atmosphere
- training harassment counsellors and investigators to perform their respective roles
- make ongoing anti-harassment training part of other training sessions

Monitoring

A commitment to periodic review of the policy

- openness to employee comments
- solicitation of feedback from counsellors, managers, and employees
- exit interviews with personnel leaving the organization
- make necessary adjustments to policy and procedures

PART 8: FREQUENTLY ASKED QUESTIONS: INFORMATION FOR EMPLOYEES

Is harassment just a matter of opinion?

No. Because of variances in life experiences, different people may have different perceptions of what harassment is, but we can still develop some common understandings. Any unwelcome behaviour that demeans, humiliates, or offends a person, or puts sexual conditions on

a person's job, is harassment.

What if everyone else in the workplace is comfortable with the behaviour?

People react to behaviour in different ways. A person may think her or his conduct is welcome or innocuous, when in fact the recipient dislikes it, but is going along with it to avoid a confrontation. This can happen especially where there is a difference in age, racial or cultural background, seniority, level of authority, or personal power between those concerned. Sometimes people feel they have to join in to avoid being ostracized, victimized, or teased by their peers. However, if you are uncomfortable with this behaviour, you have the right to file a complaint and follow the steps outlined in this policy.

How does a person know what behaviour is unwelcome?

Sometimes a person can say directly that something that is offending or humiliating. Other times, we have to be aware of non-verbal messages and clues. If someone looks embarrassed or hurt, turns away, leaves the room, or avoids another, chances are they do not welcome certain behaviour.

The courts have created the 'reasonable person' rule; in other words, we assume that a reasonable person would know that certain types of behaviour are unwelcome. For example, a reasonable person would know that asking for sexual favours, and threatening someone's job if they do not comply, is unacceptable. In cases like this, the courts may presume the behaviour was unwelcome, even if the complainant has never said "no" or "stop," and seemed to go along with the situation.

Case study: what's "reasonable"

A woman alleged that she had been sexually harassed during her employment interview with a government department. During the interview, she was asked a number of questions about a previous sexual harassment complaint she had filed against another government department. She said the effect of the questions and discussion was harassment.

This case focussed on the issue of what standard to use when determining whether harassment has occurred. The traditional standard was whether a "reasonable person" would consider it harassment. The human rights tribunal hearing this case recognized that men and women might have different points of view about certain behaviour. For example, a male supervisor may believe it is acceptable to

tell a female subordinate that she has 'nice legs', while the female employee may be offended and humiliated by the comment. The usual 'reasonable person' standard would, therefore, be insufficient in a case where a woman claimed to have been sexually harassed. The review tribunal accordingly adopted a 'reasonable woman' standard as the appropriate one for cases of sexual harassment. (*Stadnyk v. Canada Employment and Immigration Commission*)

What if colleagues want a sexual relationship?

A relationship where both people are involved of their own free will is not harassment. However, if one person decides to end the relationship, the other does not have the right to insist, or to continue the sexual attention. And managers should be cautious when getting involved with workers, especially anyone who is under their supervision. The imbalance of power may mean that the worker has not actually consented, but feels coerced into the relationship.

What if my employer doesn't know harassment is taking place?

Only employers can really prevent harassment in the workplace. So the ultimate responsibility rests with them. The law says that even an employer who didn't actually know about the harassment is still responsible, if he or she should have known it was occurring. If an employer can show that he or she took all reasonable steps to prevent and deal with harassment, the legal and financial consequences may well be less severe.

Can it be harassment if it only happened once?

Yes. Frequently, harassment is a series of incidents. However, even something that only happens once can be harassment, if it was unwelcome to the person it was directed at.

What if the harassment takes place outside the workplace, or after regular work hours?

Any place or time that people are gathered for work-related reasons is still considered part of the 'workplace'. This includes business travel, conferences, telephone calls, company social gatherings, and job interviews. Harassment is not permitted in any of these situations, and employers are responsible for dealing with it in these circumstances.

What if I didn't mean to harm or offend anyone?

Even the best intended comment or action may be harassing, if it is

unwelcome or offensive to another person. Harassment is not about a person's *intent*. It is about how the behaviour affects the victim. You may only have intended to be funny, for example; but if someone else is humiliated by what you did or said, you may have harassed them without meaning to.

Case study: the victim's perception

An aboriginal employee alleged that he was harassed by racist comments, jokes, and names from his supervisors and colleagues. Some of the witnesses claimed that although such jokes or comments were made, they were made in a spirit of fun between friends, and that no offense was meant. The tribunal found that the intention of the person making the comments is irrelevant: "the issue is the perception of the individual who is victimized."

The fact that the victim did not object to the comments and even participated in the "joking" was raised as a defence. The tribunal held that this did not mean that the victim had consented to the racist comments, jokes and names or make this behaviour acceptable. According to the testimony of an expert witness, people may go along with activities "that they find objectionable and demeaning because they feel powerless to stop it and as an ego defense mechanism"...it is "a form of coping." (*Swan v. Canadian Armed Forces*)

What if someone at work tries to retaliate against a complainant?

Employers are legally required to protect their employees from retaliation. Retaliation against anyone involved in a complaint will not be tolerated, and will have serious consequences. Generally, the penalties for retaliation are the same as for the original harassment, and may be even more severe.

What if an employer doesn't deal properly with a problem of harassment?

An employee who feels her or his concerns have not been properly addressed has the right to contact the appropriate human rights commission or other organization. If an outside agency determines that harassment has taken place, the employer may face financial or other consequences: giving an apology, compensating the complainant for lost wages and injury to self-respect, or human rights training, for example. The exact remedy will depend on the complaint.

Can my union help me?

Unions can be involved in developing a workplace's anti-harassment policy, and in educating union members. Once there has been a harassment complaint, an employee who is involved may be able to file a grievance with the union, if the employer did not handle the complaint properly.

What if I am sexually assaulted at work?

If the harassment involves physical or sexual assault, you should contact the police. Physical and sexual assaults are criminal offences.

APPENDIX A: LEGISLATION

The Canadian Human Rights Act

14 (1) It is a discriminatory practice,

> (a) in the provision of goods, services, facilities or accommodation customarily available to the general public,
>
> (b) in the provision of commercial premises or residential accommodation, or
>
> (c) in matters related to employment,

to harass an individual on a prohibited ground of discrimination.

> (2) Without limiting the generality of subsection (1), sexual harassment shall, for the purposes of that subsection, be deemed to be harassment on a prohibited ground of discrimination.

Canada Labour Code, Part III

Division XV.1

Sexual Harassment

247.1 In this Division, "sexual harassment" means any conduct, comment, gesture or contact of a sexual nature

(a) that is likely to cause offence or humiliation to any employee; or

(b) that might, on reasonable grounds, be perceived by that employee as placing a condition of a sexual nature on employment or on any opportunity for training or promotion.

247.2 Every employee is entitled to employment free of sexual harassment.

247.3 Every employer shall make every reasonable effort to ensure that no employee is subjected to sexual harassment.

247.4 (1) Every employer shall, after consulting with the employees or their representatives, if any, issue a policy statement concerning sexual harassment.

(2) The policy statement required by subsection (1) may contain any term consistent with the tenor of this Division the employer considers appropriate but must contain the following:

(a) a definition of sexual harassment that is substantially the same as the definition in s.247.1;

(b) a statement to the effect that every employee is entitled to employment free of sexual harassment;

(c) a statement to the effect that the employer will make every reasonable effort to ensure that no employee is subjected to sexual harassment;

(d) a statement to the effect that the employer will take such disciplinary measures as the employer deems appropriate against any person under the employer's direction who subjects any employee to sexual harassment;

(e) a statement explaining how complaints of sexual harassment may be brought to the attention of the employer;

(f) a statement to the effect that the employer will not disclose the name of a complainant or the circumstances related to the complaint to any person except where disclosure is necessary for the purposes of investigating the complaint or taking disciplinary

measures in relation thereto; and

(g) a statement informing employees of the discriminatory practices provisions of the *Canadian Human Rights Act* that pertain to rights of persons to seek redress under that Act in respect of sexual harassment.

(3) Every employer shall make each person under the employer's direction aware of the policy statement required by subsection (1).

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